

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD KAPLAN,
Plaintiff,

v.

NATIONAL CHECK FRAUD CENTER,
Defendant.

No. C-04-02394 EDL

**REPORT AND RECOMMENDATION
RE: DISMISSAL**

Plaintiff, who is represented by counsel, filed this action on June 16, 2004. By court order dated June 16, 2004, this case was set for an initial case management conference on October 19, 2004 at 10:00 a.m. By clerk's notice of September 13, 2004, the initial case management conference was continued to October 26, 2004 at 10:00 a.m. Counsel failed to appear at the October 26, 2004 Case Management Conference. Nor did he file a case management conference statement as required by court order.

Further, it appears from the record that Plaintiff has not served Defendant with the summons and complaint. Plaintiff was required to serve Defendant within 120 days of the filing of his Complaint. See Fed. R. Civ. P. 4(m).

On October 26, 2004, the Court issued an Order to Show Cause as to why this case should not be dismissed for failure to serve pursuant to Fed. R. Civ. P. 4(m) and/or failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). At the November 9, 2004 hearing on the Order to Show Cause, Plaintiff failed to appear.

To date, no consent form has been received from any party. Therefore, this case shall be reassigned to a district court judge. In view of Plaintiffs' failure to diligently prosecute this case, the Court recommends that the district court dismiss the above-captioned case with prejudice.

Any party may file objections to this report and recommendation with the district judge within ten

1 days after being served with a copy. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); Civil L.R. 72-
2 3.

3 **IT IS SO ORDERED.**

4 Dated: November 9, 2004

/electronic signature authorized/
ELIZABETH D. LAPORTE
United States Magistrate Judge